

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KG CORNWALL, LLC.

Index No. 07 Civ. 2881 (CLB)

Plaintiff,

AFFIDAVIT

-against-

OF BURTON I. DORFMAN

BEAZER HOMES CORP.

Defendant.

STATE OF NEW YORK)

) ss.:

COUNTY OF ROCKLAND)

BURTON I. DORFMAN, does hereby affirm the following under the penalties of perjury:

1. I am a member of the firm of DORFMAN, KNOEBEL, CONWAY, FURY & GRIFFIN, LLP., and makes this affidavit in support of the relief requested in Plaintiff KG CORNWALL, LLC.'s ("KG") Motion for Leave to Amend Plaintiff's Complaint pursuant to Fed. R. Civ. P. 15 .
2. I am fully familiar with the facts and circumstances set forth herein, except where I indicate a statement is made upon information and belief.

3. It is respectfully requested that this Court based upon my affidavit this Court grant KG leave to serve the Amended Complaint annexed hereto as Exhibit "A". Annexed as Exhibit "B" is KG's Complaint. Annexed as Exhibit "C" is a copy of this Court's Memorandum and Order granting Defendant's motion for Partial Summary Judgment dismissing the Second, Third and Fourth Count of Plaintiff's Complaint . Annexed as Exhibit "D" is a copy of the Transcript of the Proceedings before this Court on March 26, 2008.
4. That at the last Court appearance the Court stated "The Court will be in possession of either an amended pleading or a letter saying you don't wish to amend" (p. 31, Exhibit "D"). I am separately emailing with the Court and faxing a copy of the amended Pleading to the Court on today's date. There is a possibility that this Motion is unnecessary however, I felt compelled to serve same in light of the April 30th cut off date.
5. The Amended Complaint (Exhibit "A") contains an amended First Count and an additional Fifth Count for Specific Performance.
6. The Second, Third and Fourth Counts have remained in the Complaint with full knowledge that Defendant Beazer Homes Corp.'s motion for partial summary judgment on these Counts have been granted solely as a result of the language of the Memorandum and Order further provides, "For the present, the Court Declines to make the finding contemplated by Rule 54(b) Fed.R.Civ.P.".

7. That this Motion for Leave is made as a result of KG clearly providing ample proof as set forth in the amplified Chronology portion of the Amended Complaint (¶¶9 through 38, Exhibit "A") and in the amended First and Fifth Counts of Amended Complaint.
8. More importantly, the liquidated damages clause contained in paragraph "7" of the Agreement between KG and Defendant is not reasonable in light of the fact that the purported liquidated damages were clearly disproportionate to KG's foreseeable losses and the actual losses were readily ascertainable on the date the Agreement was executed (Exhibit "E"). (see also, Point I, Memorandum of Law).
9. Therefore, it is respectfully requested that KG be granted leave to file the amended complaint.

Dated: Nyack, New York

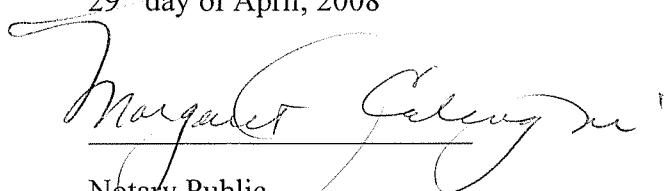
April 29, 2008



BURTON I. DORFMAN

Duly sworn to before me this

29th day of April, 2008



Notary Public

MARGARET A. CALCAGNI
Notary Public, State of New York
No. 4952689
Qualified in Rockland County
Commission Expires June 26, 2011